

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 11

PINE HALL BRICK COMPANY, INC.

Employer

and

Case No. 11-RC-6569

INTERNATIONAL BROTHERHOOD OF TEAMSTERS,
LOCAL 391, AFL-CIO

Petitioner

REGIONAL DIRECTOR'S DECISION AND DIRECTION OF ELECTION

The Petitioner seeks to represent a unit comprised of all delivery drivers of the Employer who work at the Employer's brick and paver manufacturing facility in Madison, North Carolina and at the Employer's three retail stores in North Carolina.¹ The Employer contends that the petitioned-for unit is inappropriate, and that the appropriate unit should include not only the delivery drivers, but also a number of classifications under the transportation unit, including relief delivery driver, non-delivery truck drivers, forklift operators, front-end loader operators, leadpersons, sample makers, utility persons, and mechanics. Because I find that the delivery drivers constitute a distinct and homogeneous grouping of employees, with a community of interest that is sufficiently separate from the remaining employees, I will direct an election in the petitioned-for unit.

¹ The terms "delivery driver" and "over-the-road driver" are used interchangeably by the parties. In this decision, the term "delivery driver" will be used.

With respect to the relief delivery driver, because the position had not actually been filled at the time of the hearing, I will neither exclude nor include the position in the unit, but rather, will direct that any incumbent occupying the position at the time of the election who meets the eligibility requirements with respect to the eligibility date and being employed on the date of the election shall be permitted to vote subject to challenge.

I. THE EMPLOYER'S OPERATIONS

The Employer, a North Carolina corporation with corporate offices located in Winston-Salem, North Carolina, produces, sells and distributes brick and brick pavers. Its manufacturing operations include locations in Madison, North Carolina, where it operates three plants situated in close proximity to each other, as well as in Fairmont, Georgia. The Employer also operates retail stores in Winston-Salem, Greensboro, and Charlotte, North Carolina, and a brick distributorship in Richmond, Virginia.

Within its organizational structure, the Employer has designated a transportation unit, which encompasses the functions of mining, garage, delivery, loading, samples, and dispatch. An individual named Preston McMillan supervises mining; Charles Brim supervises the garage; and Marie Collins supervises the functions of delivery, loading, samples and dispatch. All of these individuals report to the Vice-President of Operations.

The Employer offers identical fringe benefits and applies common human resources policies to all of its employees.

a. Manufacturing

The Employer operates three manufacturing plants in Madison. It manufactures various kinds of brick at Plants 3 and 4, which are located adjacent to each other on the same site in Madison, and it manufactures brick pavers at Plant 5, which is located about

two and a half miles from Plants 3 and 4. The Employer employs a total of about 175 production employees in the three plants.

b. Loading

The brick product at the manufacturing site is loaded onto delivery trucks by loading crews, which are comprised of forklift operators, lead persons, and a utility person. The forklift operators perform the actual loading; lead persons provide guidance to the employees performing the loading operation; and the utility person is primarily responsible for inspecting and correcting the packaged product, and may also go from yard to yard to pick up small items and take them to where the delivery trucks are being loaded. The forklift operators and utility person are paid a straight hourly rate, and are paid during lunch and breaks. These employees are supervised by Marie Collins.

The brick product at each of the retail sites is loaded by a forklift operator, who is responsible for loading the delivery truck as well as trucks of any individual customers purchasing brick at the retail store. There are two forklift operators assigned to the Winston-Salem store, and one each in Charlotte and Greensboro. These operators are all supervised separately at their locations.

c. Mining

The Employer's manufacturing operations include pit mines, where the shale that is used in the manufacture of brick is mined. These pit mines are located from three to thirteen miles from the main plant site. There are dump truck drivers and front-end loader operators assigned to the mining operations; they are supervised by Preston McMillan. The front-end loader operators load the shale onto dump trucks, and the drivers then transport the shale to an area known as the grinding operation, which is

located at the main plant site just north of plant 3. The shale is stockpiled in the grinding area and subsequently ground to prepare it for the production process.

In addition to the front-end loader operators at the mines, there is also a front-end loader operator employed in the grinding area. All of the operators are paid with a base pay rate and an incentive factor, and are not paid for break or lunch times.

There are seven mine dump truck drivers, who spend the majority of their workday transporting shale from the pit mines to the grinding area. On occasion, the mine drivers transport bulk sand to the facility. There is an additional dump truck driver who drives a water truck, used to dampen the dust on the roadways at the mines and the plant site. The mine drivers are required to have a Class A commercial drivers license, but are not required to maintain a DOT driving log, as they do not drive the requisite threshold number of miles for this requirement. The mine drivers are paid a minimum base pay of \$7.99 an hour, with additional incentive pay based on a load rate calculated for each of the four mines. The number of loads from a mine is multiplied by the incentive factor and produces the number of hours to be paid at the hourly rate. These drivers do not receive pay for their break or lunch times.

d. Garage

The Employer employs mechanics who perform minor repair and routine maintenance on its delivery trucks, dump trucks, front-end loaders and forklifts. The garage is located on the main plant site. The mechanics are paid a straight hourly rate. They are supervised by Charles Brim.

e. Sample Making

The Employer makes its own sample boards and panels showing the colors and kinds of brick that it manufactures. These samples are made in a small facility located between Plants 3 and 4. These sample boards are transported to various locations either by motor freight or by delivery trucks. In addition, the lead person in the sample department, who has a commercial driver's license, delivers brick samples to customers, primarily on an emergency basis. The sample makers are paid a straight hourly rate, and are supervised by Marie Collins.

f. Retail Stores

The Employer operates three retail stores to market its products, one each in Winston-Salem, Greensboro, and Charlotte, North Carolina. There is a brickyard adjacent to each retail store. Each store has its own supervisor.

II. THE DELIVERY DRIVERS

There are two groups of delivery drivers: those who are assigned to transport brick products from the Madison plants to various locations, of whom there are currently 22, and those who are assigned to the retail stores, of whom there are currently three. In regard to the manufacturing plant delivery drivers, there is also one relief delivery driver position, which is currently vacant. Although the job duties of both groups of delivery drivers are similar, I will discuss each group separately, dealing first with the specific duties of the delivery drivers who transport product from the plants, and then duties of the drivers assigned to the retail stores. Thereafter I will address the issue of job requirements and wage structures applicable to both sets of drivers. Finally, I will address the projected job requirements and duties of the position of relief delivery driver.

a. Duties and working conditions of manufacturing delivery drivers.

The manufacturing delivery drivers are supervised by Marie Collins. The general duties of these drivers include delivering brick products to the Employer's brickyards, to job sites, to customer brickyards, and to dealers. They also sometimes transport pavers from Plant 5 to the main plant site. These delivery drivers also occasionally make runs to the Richmond, Virginia distributorship and to other locations including Wilmington, North Carolina and Columbia, South Carolina.

The process of transporting a load starts with delivery drivers getting a loading ticket from the dispatch office, which is situated at the main plant site beside a parking area specifically designated for the delivery drivers. Once the drivers get their loading tickets, they notify the loading crew that they are coming to pick up the brick, which is located at various places throughout the plant site. Brick products are packaged into cubes, which are contained by plastic straps and steel bands. When the drivers arrive, they give one copy of the loading ticket to the forklift operator and may discuss with the operator the order in which they want the particular brick to be loaded onto the truck. After the cubes are loaded onto the trucks, the drivers are responsible for tying down the load, for performing a safety check and for fueling the truck.

The maximum driving range for these delivery drivers is about 150 miles, with the average trip distance being 75 miles. Once the drivers reach their destinations, they are responsible for meeting with the customers at those locations and then unloading the brick. For unloading, the drivers use an all-terrain forklift called a moffett, which is transported on each of the delivery trucks.

Delivery drivers average about two of these trips per day. When they return from the first trip, they go to the dispatch office to turn in their paperwork and get the next loading ticket. Generally, at the end of the day, delivery drivers arrange to have their trucks loaded for the first trip of the following day. Drivers whose trucks are preloaded may report to work at any time they choose between 4 a.m. and 6:45 a.m. They then simply do a safety check, fuel up, and leave on their first trip.

b. Duties and working conditions of the retail store delivery drivers.

The retail store delivery drivers perform similar duties to the plant delivery drivers, although the loads they transport are generally smaller, and the distances they travel to deliver the product are generally shorter, as the primary area of delivery for these drivers is the town in which each store is located. The retail delivery drivers report for work daily at their respective retail store locations, and are supervised by the retail store supervisor.

c. Job requirements and wages common to both groups of drivers.

In regard to job requirements, all delivery drivers are required to maintain a Class A commercial driver's license. They are required to keep a driving log when either their hours or the distance driven reaches a specific threshold amount. Delivery drivers are required to wear a company uniform, which is different from uniforms worn by any other employees. Delivery drivers are the only group of employees who are issued company cell phones.

In regard to wages, delivery drivers are paid by a formula that includes a certain amount for each brick cube that they transport, for each stop that they make, and for the total number of miles driven. A base pay rate of \$10.04 per hour also applies to delivery

drivers for those periods of time when the drivers are not actually performing delivery duties, such as when they are washing their trucks or are broken down on the highway. This hourly rate does not apply to time spent waiting for trucks to be loaded. Delivery drivers are not paid for break or lunch time.

d. The relief delivery driver position

The Employer only recently decided to fill this position, and, at the time of the hearing, the individual chosen had not yet begun working in the position. The duties of the relief delivery driver are projected to include: filling in for drivers during periods of sickness or vacation; reviewing directions that are submitted to the office, to ensure that they are accurate; delivering some loads during the middle or latter part of the day; and working in the dispatch office from 4:30 p.m. to 6:00 p.m., after the dispatchers have left for the day, to help resolve any questions or problems that the delivery drivers may be experiencing on the road. It appears from the record that the relief driver will be paid the base rate of \$10.04 an hour for the time he spends performing duties other than driving.

III. CONTACT AND INTERCHANGE BETWEEN DELIVERY DRIVERS AND THE CLASSIFICATIONS THE EMPLOYER SEEKS TO INCLUDE IN THE UNIT

As set out above, the Employer contends that the appropriate unit should include, in addition to the delivery drivers, all of those employees who are assigned to the overall transportation unit, including the relief delivery driver, the dump truck drivers, forklift operators, front-end loader operators, lead persons, utility persons, sample makers and mechanics, as well as the front-end loader operator assigned to the grinding area. The

following section addresses the amount of contact and interchange between these classifications and the delivery drivers.

a. Employee contact

The record establishes that, although all of the foregoing classifications play a role in the overall transportation of either raw material or finished product from or to the Employer's operations, the amount of contact and interaction between the delivery drivers and these other job classifications is minimal. In this regard, the most substantial contact between the delivery drivers and employees in other classifications occurs during the loading process. The record establishes that the delivery drivers give direction to the forklift operators about the order of loading the trucks, but that there is no regular practice of the drivers working in close conjunction with the operators after that time. Moreover, the loading process is generally completed in a very short time, after which the drivers are on the road or at a customer location. Thus, averaging two trips a day, the manufacturing delivery drivers generally have only two occasions when they experience brief contact with loading crews. Similarly, the record establishes that these delivery drivers have only minimal contact with mechanics, as the drivers bring their trucks in to the garage only for minor repairs, such as bulb replacements, which are completed quickly.

In regard to any other groups of employees, there is virtually no opportunity for daily contact, as the delivery drivers park their cars in a different location from employees in all the other classifications, work a flexible schedule largely of their own choosing, and do not partake in breaks or lunch time with any of the other employees.

b. Employee interchange

The record establishes that there has been some interchange between delivery driving positions, non-delivery driving positions and production positions over the years. The Employer introduced an exhibit reflecting that during the period between 1978 and 2001, a total of 11 employees transferred in and out of various positions, some on more than one occasion. The record also contains testimony suggesting that non-delivery drivers could fill in for delivery drivers if the need were to arise, but the Employer did not provide details of how often this may have occurred.

IV. ANALYSIS

Settled Board authority provides that a petitioned-for unit need not be the most appropriate or comprehensive unit, but simply an appropriate unit. Dezcon, Inc. 295 NLRB 109, 111 (1989) In the context of driver units, the Board applies a case-by-case analysis in determining whether a separate unit of drivers constitutes an appropriate unit. E.H. Koester Bakery Co., Inc., 136 NLRB 1006 (1962) To the extent that a petitioned-for unit of over-the-road drivers constitutes a clearly defined homogenous and functionally distinct grouping of employees, the Board has found such a unit to be appropriate on its own, without the inclusion of local drivers. Georgia Highway Express, 150 NLRB 1649, 1651 (1965); Gluck Bros., 119 NLRB 1848 (1958).

Applying the foregoing principles to the facts here, I find that the petitioned-for unit constitutes a clearly defined homogeneous and functionally distinct group for the following reasons. First, the delivery drivers have the least contact with other employee classifications of all the other classifications that the Employer seeks to include in the unit. That is, the delivery drivers spend the vast majority of their time away from the

facility. Unlike the mine drivers, who make multiple trips back and forth from the mines to the plant area on a daily basis, the delivery drivers are only present at the facility, on average, twice a day, for brief periods.

Second, the nature of the work duties of delivery drivers is functionally distinct. When the delivery drivers are delivering their loads, they are interacting directly with the Employer's customers, rather than with other employees, unlike the mine drivers and the other employees who the Employer asserts should be included, who interact primarily with other employees during the course of their workdays.

Third, the delivery drivers experience separate working conditions that are not shared by other employees. In this regard, the delivery drivers are the only employees who are: 1) required to wear uniforms; 2) subject to certain DOT driving regulations, including the requirement of maintaining a driving log; 3) permitted to work according to their own flexible schedules; and 4) required to use company cell phones.

The Employer argues that the delivery drivers share such a strong community of interest with the non-delivery drivers that a unit that did not include both groups would be inappropriate. The Employer asserts that this community of interest is based on: the similar method of compensation applicable to both groups; the common fringe benefits; similar working conditions, qualifications, and skills; historic interchange between the classifications; and finally, on a history of collective bargaining, based on the existence more than ten years ago of a collective bargaining agreement with a different union, which contained a recognition clause covering a wall-to-wall unit.

On balance, I find that the foregoing factors do not outweigh those that support the finding of a separate and distinct identity of the delivery drivers. In this regard, the

common fringe benefits and human resources policies apply to all of the Employer's employees, not just to the mine drivers, or just to the other employees who the Employer contends should be in the unit. This commonality, therefore, does not contribute to a distinct community of interest for the unit that the Employer asserts would be appropriate. Moreover, as set out above, the specific job duties and working conditions of the delivery drivers differ from the mine drivers in material respects. Given those differences, that both classifications are required to possess a Class A CDL license is not dispositive. Further, the history of interchange does not demonstrate such a pervasive pattern as to suggest that the delivery and non-delivery driver classifications are interrelated. Finally, in regard to collective bargaining history, it is irrelevant that the Employer had a contract with a different union, covering a different unit from that which either party puts forward in this proceeding, during a period over a decade ago.

Finally, in regard to the position of relief delivery driver, because the position was not actually filled at the time of the hearing, there is an insufficient basis upon which to either include or exclude the position from the unit. As the evidence indicates that the person filling the position may have duties similar to the delivery drivers, however, I direct that, if the position is filled prior to the date of the election, and the incumbent meets the eligibility requirements with respect to the eligibility date and being employed on the date of the election, he or she shall be permitted to vote subject to challenge.

V. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Union involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time delivery drivers employed by the Employer at its Charlotte, Greensboro, Madison and Winston-Salem, North Carolina locations, but excluding all other employees, dump truck drivers, forklift operators, front-end loader operators, lead persons, utility persons, sample makers, mechanics, office clerical employees and guards, professional employees, and supervisors as defined in the Act.

VI. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by International Brotherhood of Teamsters, Local 391, AFL-CIO. The date time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to the Decision.

A. Voting Eligibility

Eligibility to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employee who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 12367 (1966); NLRB v. Wyman-Gordon Company, 395 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting processes, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 4035 University Parkway, Suite 200, P.O. Box 11467, Winston-Salem, North Carolina, 27116-1467, on or before **Thursday, May 20, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (336) 631-5210. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least

5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. received by the Board in Washington by **May 27, 2004**.

Dated at Winston-Salem, North Carolina, this 13th day of May, 2004.

Willie L. Clark, Jr.
Regional Director
National Labor Relations Board
Region 11
4035 University Parkway, Suite 200
P. O. Box 11467
Winston-Salem, North Carolina 27116-1467